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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,957	01/31/2002	Fangjiang Guo	88164.000002	4571
23387	7590	10/03/2005	EXAMINER	
Stephen B. Salai, Esq. Harter, Secrest & Emery LLP 1600 Bausch & Lomb Place Rochester, NY 14604-2711			SMITH, KIMBERLY S	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/062,957

Applicant(s)

GUO, FANGJIANG

Examiner

Kimberly S. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 and 36-51 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 and 42-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-34 and 36-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. During the Appeal Conference, it was determined that some of the rejections of the Final Office action were improper. Accordingly, the Final Office action is hereby vacated and prosecution is reopened. The Examiner regrets any inconvenience to the Applicant.

Election/Restrictions

2. Upon further review of the restriction requirement, it is determined that the justification for the restriction requirement was improper. The restriction requirement set forth five groups of inventions as follows:

I) Claims 1-11

III) Claims 22-31

V) Claims 42-51

II) Claims 12-21

IV) Claims 32-34 & 36-41

3. The justification for restriction between Groups II & I was subcombination useable together and between groups III & I was also subcombinations useable together. However, this is deemed incorrect.

4. Both claims 1 and 12 are drawn to a method of presenting an animal to be milked comprising rearwardly loading an animal into a milking stall and forwardly unloading the animal from the milking stall. Claims 22 and 32 are drawn to a method of presenting an animal to be milked comprising loading an animal onto a transport cart, translating the cart, and loading the animal into an unoccupied stall.

5. Claims 1 and 12 are categorized as combination and claims 22 and 32 are subcombination, as claims 22 and 32 do not require the step of unloading the animal from the stall.

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6. Accordingly, since the justification for the restriction requirement was improper, the finality of the restriction requirement is hereby withdrawn. The new grouping of the claims as detailed above are as follows:

7. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- A. Claims 1-21, drawn to a combination method of presenting an animal to be milked, classified in class 119, subclass 14.02.
- B. Claims 22-34 and 36-41, drawn to a subcombination method of presenting an animal to be milked, classified in class 119, subclass 412.
- C. Claim 42-51, drawn to a milking parlor, classified in class 119, subclass 14.03.

The inventions are distinct, each from the other because of the following reasons:

8. Inventions A and B are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination requires the forward unloading of the animal through an ingress/egress end along a unique exit path. The subcombination has separate utility such as a method of stabling a goat (as a milking stall does not require any structure outside of the stall structure, as milking is capable of being done by a human).

9. Inventions A/B and C are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used

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to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice the loading of supplies into an empty stall for storage purposes.

10. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

11. Because these inventions are distinct for the reasons given above and the search required for Group A is not required for Group B, restriction for examination purposes as indicated is proper.

12. Since the Applicant has previously elected to prosecute Claims 32-34 and 36-41, claims 22-31 will also be examined with the elected claims according to the grouping of claims as stated above.

13. Claims 1-21 and 42-51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. Claims 22, 23, 27, 28, 32, 33, 36, 37, 38 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs et al., US Patent 3,810,442 (Jacobs).

Regarding claim 32, Jacobs discloses a method obvious through the operation of the apparatus including moving a first animal to be milked onto a first animal transport cart (13), translating the first animal transport cart along a predetermined path relative to a plurality of milking stalls (30) and moving the animal from the transport cart and into the unoccupied milking stall. It is noted that Jacobs does not disclose the animal being removed from the transport cart as the animal remains on the transport cart during the milking process. However, the method as claimed does not require the unloading of the animal from the transport cart, only the moving the animal from the transport cart and into the unoccupied milking stall. After the transport cart has translated the animal into the milking stall area, the cart then becomes the floor of the milking stall and as such, the apparatus of Jacobs has moved the animal from the transport cart and into the unoccupied milking stall (as is clearly seen that before the transport cart has entered the milking room, the stall is unoccupied).

Regarding claim 33, as is clearly seen in Figure 2, Jacobs discloses a release area (33) being adjacent the plurality of milking stalls (30).

Regarding claim 36, Jacobs discloses translating a second animal transport cart (31) relative to the plurality of milking stalls.

Regarding claim 37, Jacobs discloses loading a plurality of animals onto the first animal transport cart.

Regarding claim 38, Jacobs discloses moving an ingress/egress gate (37) from an open position to a closed position (column 10, lines 7-10) upon rearwardly loading the animal into the

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milking stall. As can be seen in Figure 7, the milking apparatus is applied rearwardly (i.e. through the rear legs of the animal) and as such, Jacobs discloses that the animals are rearwardly loaded into the milking stalls.

Regarding claim 41, Jacobs discloses that the animal is rearwardly loaded into the milking stall (as discussed above with regards to claim 38). As the animal is not physically restrained within the stall, i.e. is capable of movement to the left, right, forward, or backward within it's respective stall, such movement is independent of the adjacent milking stall and as such, Jacobs discloses the animal is capable of being loaded into the milking stall at a distance independent of the adjacent milking stall.

Regarding claim 22, Jacobs discloses a method obvious through the operation of the apparatus including moving a first animal to be milked onto a first animal transport cart (13), translating the first animal transport cart to align with an unoccupied milking stall (30) and moving the animal from the transport cart and into the unoccupied milking stall. It is noted that Jacobs does not disclose the animal being removed from the transport cart as the animal remains on the transport cart during the milking process. However, the method as claimed does not require the unloading of the animal from the transport cart, only the moving the animal from the transport cart and into the unoccupied milking stall. After the transport cart has translated the animal into the milking stall area, the cart then becomes the floor of the milking stall and as such, the apparatus of Jacobs has moved the animal from the transport cart and into the unoccupied milking stall (as is clearly seen that before the transport cart has entered the milking room, the stall is unoccupied). Jacobs further discloses that the animal is rearwardly loaded into the unoccupied milking stall. As the milking claw is to be placed on the teats from the rear of the

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animal (i.e. between the rear legs), the cow is considered to be rearwardly loaded within the milking stall.

Regarding claim 23, Jacobs discloses translating the transport cart along a direction transverse to the longitudinal dimension of the milking stall (as viewed in Figure 1).

Regarding claim 27, Jacobs discloses loading a second animal onto the transport cart prior to unloading the first animal (as is clearly noted that the transport cart moves more than one cow to the milking room and as such, the second animal is loaded onto the transport cart prior to the unloading of the first animal).

Regarding claim 28, Jacobs discloses moving a moveable platform from a first position spaced from the milking stall (i.e. the loading position) to a second position adjacent a rear end of the milking stall.

16. Claims 29, 30, 31, 34, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs, as applied to claim 32 above, and further in view of van der Lely, US Patent 5,771,837.

Regarding claims 29 and 34, Jacobs discloses the invention substantially as claimed. However, Jacobs discloses the use of a human to attach the milking claw to the animal and not a robotic arm. van der Lely teaches within the same field of endeavor the use of a robotic arm to attach a milking claw to an animal thereby reducing the amount of human labor required which thereby reduces the overall operating costs of the milking parlor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the robotic milking arm as taught by van der Lely with the device of Jacobs in order to reduce the amount of human

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labor necessary for the running of the milking parlor thereby reducing over time the overall operating costs.

Regarding claims 30 and 39, Jacobs discloses the invention substantially as claimed. However, Jacobs does not disclose the acquisition of data specific to the given animal. van der Lely teaches within the same field of endeavor a method of milking, which monitors animal specific data prior to milking to ensure the animal is appropriate for a given milking cycle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the acquisition device as taught by van der Lely with the method of Jacobs in order to ensure that each animal is milked correctly.

Regarding claims 31 and 40, Jacobs as modified in the previous claim teaches a method comprising a radio frequency identification reader (see van der Lely disclosure). It would have been obvious to one having ordinary skill in the art at the time the invention was made to connect the reader to the transportation cart, since it has been held that the rearranging of parts of an invention involves only routine skill in the art. (*In re Japikse*, 86 USPQ 70).

Double Patenting

17. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

18. Claims 21-34 and 36-41 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,814,026.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent includes an apparatus and a method for presenting an animal to be milked inclusive of loading an animal upon a transport cart (i.e. the shuttle stall), wherein the cart moves along a direction transverse to the longitudinal direction of the milking stall, with unloading the animal (claim 19). While the claims of the patent do not specifically state that the animal is unloaded into a released area, it is inherent that any area to which the animal resides after being unloaded is considered a released area.

19. Claims 21-34 and 36-41 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-66 of copending Application No. 10/196,789. Although the conflicting claims are not identical, they are not patentably distinct from each other because as per claim 20 of the conflicting application, the method requires loading a milking stall from a bridge cart. As it is inherent that the animal must be loaded onto the cart at some point, the claims of the instant application are not distinct therefrom as the general "loading a milking stall" is inclusive of both a forwardly and rearwardly loading thereof.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly S Smith
Examiner
Art Unit 3644

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